

**SETTLEMENT AGREEMENT BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION AND OZARKS PROPERTY MANAGEMENT, LLC**  
**AND ANTONIO SERRANO**

Come now Ozarks Property Mangement, LLC , ("Ozarks") , and Antonio Serrano ("Serrano") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Ozarks' license as a real estate association and Serrano's licenses as a real estate broker associate and broker officer will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees Ozarks and Serrano acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, Ozarks and Serrano knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to them.

Ozarks and Serrano acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

For the purpose of settling this dispute, Ozarks and Serrano stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that their licenses, numbered 2010007474 (Ozarks) and 2015022454 (Serrano's broker associate license) and 2014029558 (Serrano's broker officer license) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Ozarks, holds a real estate association license from the Commission, license number 2010007474. The Commission issued Ozarks' license on March 4, 2010 and it expires June 30, 2018. Ozarks' license was not current and active at all relevant times herein. Licensee Antonio Serrano is the designated broker officer for Ozarks.

3. Licensee, Antonio Serrano, holds a broker associate and broker officer licenses from the Commission, license numbers 2015022454 and 2014029558, respectively. The Commission issued Serrano's broker associate license on July 6, 2015 and its expiration date is June 30, 2018. The Commission issued Serrano's broker officer license on August 15, 2014 and it expires on June 30, 2018. Both of Serrano's licenses were current and active at all relevant times herein.

4. Between July and August 2017, the Commission conducted an audit of the Licensees. The Commission's audit revealed:

- a. In violation of § 339.020 and CSR 2250-8.090(9) (L), on four instances, Brittany Workman, an unlicensed person signed the management agreement for the broker.
- b. In violation of §§ 339.100.2(3) and 339.790.2(1), in one instance, the broker failed to timely remit funds that belonged to others.
- c. In violation of § 339.105.1, in one instance, there was comingling in the property management account held by Simmons Bank, account number 94024084.

- d. In violation of § 339.105.1, RSMo, in nine instances, there was an identified overage totaling \$12,180.00 in the security deposit escrow account at Southern Bank, account number 510006450, as follows:
- i. \$595.00 due to managing without a written agreement (2225 N. National);
  - ii. \$625.00 due to managing without a written agreement (1133 N. Davies);
  - iii. \$475.00 due to managing without a written agreement (2020 N. Fairway);
  - iv. \$3,310.00 owner to hold security deposits (431 E. Harrison);
  - v. \$4,280.00 owner to hold security deposits (1438 E. Elm);
  - vi. \$550.00 owner to hold the security deposits (920 S. South);
  - vii. \$750.00 owner to hold security deposit (811 N. Fremont);
  - viii. \$650.00 owner to hold security deposit (2849 N. Missouri);
  - ix. \$945.00 owner to hold security deposit (3222 W. Roxbury).
- e. In violation of § 339.105.1, RSMo, in one instance, there was an identified overage of \$5.00 in the property management escrow account held by Simmons Bank, account number 94024084, where check number 4056 issued for \$1,299.84, and cleared the bank for \$1,294.84.
- f. In violation of § 339.105.1, RSMo, there were three instances of identified overages totaling \$396.06 in the property management account held by Southern Bank, account number 510008279:
- i. \$97.97 deposit cleared for amount that was different than the amount booked;
  - ii. \$63.09 due to managing without an agreement;
  - iii. \$235.00 expense reported as paid on the owner's statement was not paid from the escrow account;
- g. In violation of § 339.105.1, RSMo, there were sixteen instances of identified shortages totaling \$8,465.00 in the security deposit escrow account held by Southern Bank, account number 510006450:
- i. \$2,000.00 security deposit to be held by the brokerage (5134 S. Nettleton);
  - ii. \$600.00 security deposit to be held by the brokerage (1332 E. Blaine);
  - iii. \$600.00 security deposit to be held by the brokerage (107 Grand Prairie);

- iv. \$500.00 security deposit to be held by the brokerage (511 W. Erie);
  - v. \$25.00 security deposit to be held by the brokerage (3972 W. Edgewood);
  - vi. \$820.00 security deposit to be held by the brokerage (511 Concordia);
  - vii. \$520.00 security deposit to be held by the brokerage (1602-A W. Lynn);
  - viii. \$25.00 security deposit to be held by the brokerage (1602-B W. Lynn);
  - ix. \$150.00 security deposit to be held by the brokerage (613-A W. Madison);
  - x. \$375.00 security deposit to be held by the brokerage (613-B W. Madison);
  - xi. \$375.00 security deposit to be held by the brokerage (615-B W. Madison);
  - xii. \$350.00 security deposit to be held by the brokerage (1601 E. 8<sup>th</sup>);
  - xiii. \$450.00 security deposit to be held by the brokerage (415 W. Stanford);
  - xiv. \$300.00 security deposit to be held by the brokerage (818 N. Delaware);
  - xv. \$750.00 security deposit to be held by the brokerage (4411 W. La Siesta);
  - xvi. \$625.00 security deposit to be held by the brokerage (1441 S. Barnes).
- h. In violation of § 339.105.1, RSMo, in three instances, there were identified shortages totaling \$937.81 in the Simmons Bank property management escrow account, number 94024084, as follows:
- i. \$150.00 voided check number 4053 cleared on bank statement;
  - ii. \$650.00 voided check number 4033 cleared on bank statement;
  - iii. \$137.00 check number 2368 brokerage expense paid from the escrow account.
- i. In violation of § 339.105.1, RSMo, there were seven instances of identified shortages totaling \$3,899.59 in the Southern Bank property management escrow account number 510008279, as follows:
- i. \$20.00 bank fees;
  - ii. \$58.76 check order;
  - iii. \$1,148.95 Trieu negative owner balance;
  - iv. \$13.50 Wilken Investments negative owner balance;
  - v. \$105.00 Volk negative owner balance;
  - vi. \$60.00 R&K Wilken negative owner balance;

- vii. \$2,493.38 voided transaction cleared on bank statement.
- j. In violation of § 339.105.1, RSMo, there was 1 instance of a temporary shortage of \$495.00 in the Southern Bank account, number 510006430, where a cash receipt dated September 20, 2016, was deposited on November 1, 2016.
- k. In violation of § 339.105.1, RSMo, on numerous instances, there were temporary shortages in the Simmons Bank property management escrow account, account number 94024084, as follows:
  - i. Due to overdraft fees, analysis fees and return item fees (prior to deposits made by the broker in January 2017, the broker did not maintain any brokerage funds in the account);
  - ii. Negative owner balances.
- l. In violation of § 339.105.1, RSMo, in numerous instances, there were temporary shortages in the Southern Bank property management escrow account, number 510008279, due to negative owner balances.
- m. In violation of § 339.105.1, RSMo, in numerous instances, there were temporary overages due to managing without a written agreement, as follows:
  - i. Simmons Bank, account number 94024084;
  - ii. Southern Bank, account number 510008279.
- n. In violation of § 339.105.1, RSMo, in fourteen instances, there were overdrafts in the Simmons Bank property management escrow account, number 94024084.
- o. In violation of § 339.105.2, RSMo, the Commission was not notified within 10 banking days of a change in the property management escrow account (Bank name changed from Liberty Bank to Simmons Bank prior to the audit period, regarding Simmons Bank account number 94024084.
- p. In violation of § 339.105.2, RSMo, and 20 CSR 2250-8.220(7), in two instances, property management escrow account numbers 510006430 and 510008279, held at Southern Bank, were not registered with the Commission at the time of the audit (Broker registered the accounts on September 17, 2017).

- q. In violation of § 339.105.3, RSMo, the broker did not maintain records necessary to determine the adequacy of the Southern Bank security deposit escrow account, number 510006430).
- i. The brokerage did not maintain a complete or accurate record of transactions for the account. The brokerage staff provided a manual check register, which recorded checks issued from June 7, 2016 through March 2017. The manual register did not include any deposits made during the audit period. The bank activity report from the broker's software did not include any transactions for the audit period prior to February 10, 2017 and only one entry for February 2017. The staff provided a deposit register from the brokerage software for dates June 1, 2016 to July 24, 2017. The first deposit recorded on the computerized deposit register was dated March 28, 2017. The last deposit recorded on the deposit register was dated May 18, 2017. Due to the lack of records examiner was unable to reconcile to the bank statements;
  - ii. The broker's bank statement dated April 30, 2017 showed a transfer of \$600.00 was made from the security deposit escrow. The debit to the account was not found on the broker's general ledger report for the escrow account. The bank activity report showed one debit to the account in April 2017 which was a journal entry on April 25, 2017 for \$300.00;
  - iii. The bank statements showed numerous transfers to and from the rental escrow account. Transfers were not recorded on the broker's general ledger or the manual check register.
- r. In violation of 339.105.3, RSMo, the broker did not maintain records necessary to determine the adequacy of the Simmons Bank property management escrow account, number 94024084, as follows:
- i. Examiners were unable to determine outstanding checks. The broker's register showed checks had not been issued sequentially, voided checks were found cleared on the bank statement and the same check numbers were issued more than once. Brett Loethen stated that in many instances checks on the register had been issued to adjust the owner's account balance on the owner's statements and were not actually disbursed. In October 2016, the brokerage check number went from number 4128 to number 108.
  - ii. Property Manager, Brett Loethen, explained that expenses for properties owned by the

broker had been paid directly to the vendor by the owner/broker and were not paid from the escrow account. Mr. Loethen said that the broker had calculated owner disbursements and expenses for the properties and Automated Clearing House (ACH) transfers had been made at the bank but had not been entered on the check register. In order to correct the balances shown on the owner's statements, brokerage staff entered checks and ACH debits on the register. These entries served only as an adjustment to the account and were not actual disbursements.

- iii. Examiners were unable to reconcile ACH transfers recorded on the check register to ACH transfers on the monthly bank statement. Mr. Loethen said ACH transfers had been made at the bank as owner distributions but had not been recorded on the check register. In order to correct the owner funds reported on the owner's statements, check or ACH were entered on the register to correct the amount of owner funds shown on the owner's statements.
- iv. The October 2016 and November 2016 bank statements showed manually written checks (number 2344, 2346, 2348, and 2353), which were not found on the broker's check register. Examiners were unable to confirm if the checks issued had been deducted from the owner balances due to the broker's inaccurate records. All checks issued were to LLC's owned by the Designated Broker, Antonio Serrano.
- v. The broker's deposit register reflected deposits made through the tenant portals but did not include deposits made by the broker's office staff. Mr. Loethen said that the former property manager had failed to enter the deposits made by office staff in the broker's software. Rents received from tenants at the broker's office and not through the tenant portal, were entered on the tenant ledger and never recorded as a deposit to the escrow account. Mr. Loethen stated that after he became the property manager, he realized the deposits were showing as pending in the software. In order to correct the broker's records, Mr. Loethen applied all pending/unposted deposits. The broker's register reflected a deposit on September 13, 2016, for \$437,801.02 that Mr. Loethen advised was the post to correct the unrecorded deposits. The dated on the deposit included rents received as far

back as May 2015.

- vi. Check number 4092 was issued to Ozark Property Management for \$130.00 and voided on the broker's check register. Check number 4092 was re-issued to Casey H. Hackworth for \$417.50. The voided check to Ozarks Property Management cleared the bank on September 7, 2016. The second check for \$417.50 had not cleared the bank as of the audit cut-off.
- s. In violation of § 339.105.3, RSMo, the Broker did not maintain records necessary to determine the adequacy of the Southern Bank property management escrow account, number 510008279, as follows:
  - i. The reconciliation report provided by the broker's staff showed the account was not reconciled from January 2017 through May 2017 for amounts ranging from - \$5,311.79 to -\$26,335.14.
  - ii. The February 28, 2017 bank statement showed hand written check number 0097. The check issued to Ozark Property Management for \$2,000.00, did not include a related transaction and was not found on the broker's Check Register Detail report. The broker's Bank Activity report included an adjustment for \$2,000.00 with a memo stating that the adjustment was for a check issued from the wrong account. It was unclear if the two entries were related.
  - iii. The broker recorded check number 281 on both the rental account, number 510008279, and the maintenance account, number 94024084. Examiners were unable to determine which account the check had been issued against and which account the check should be included as outstanding.
  - iv. The broker's register showed transfers out of the rental account that were not found on the bank statement. Property Manager, Brett Loethen, explained that expenses had been entered into the brokerage software but had been paid directly by the property owner. In order to correct the balances shown on the owner's statements, brokerage staff entered check and ACH debits on the check register. These entries served only as an adjustment to the account and were not actual disbursements.



- v. The June 2017 bank statement reflected eight incoming transfers from the security deposit escrow account and seven transfers out of the rental account to the security deposit account. On the bank activity report, examiners noted journal entries recorded in June 2017. However, examiners were unable to positively reconcile the journal entries to bank statement. In addition, the journal entries on the bank activity report include both debit and credits for the same amount resulting in an adjustment of zero. Transfers were not recorded on the broker's check register.
- vi. The February 2017 bank statement showed an ACH out of the account for \$3,205.88. The broker's register showed "ACH batch #13" was transferred out to GD Investments for \$712.50 and LEI Zhang for \$2,493.38, totaling \$3,205.88. The transfer to Zhang for \$2,493.38 was voided on the register on February 7, 2017.
- t. In violation of § 339.730.1 (1), RSMo, on numerous instances, the broker failed to perform the terms of the written agreement, as follows:
  - i. Security deposits were not held in accordance with the terms of the written agreement on numerous occasions.
  - ii. Failed to issue monthly owner statements (the broker state that owner statements had not been issued for Serrano Properties LLC, Mulligan Properties LLC, Vast Properties LLC, and Stalker Investments LLC, which were LLC's owned by the broker),
- u. In violation of § 339.780.2, RSMo, and 20 CSR 2250-8.090(9) (B), in three instances, the management agreement did not state all the fees or commissions to be paid.
- v. In violation of § 339.780.2, RSMo, and 20 CSR 2250-8.090 (9) (G), in five instances, the management agreement with the landlord did not contain a statement that permits or prohibits an offer of sub-agency (form problem).
- w. In violation of § 339.780.2, RSMo, and 20 CSR 2250-8.200 (1), in five instances, the broker managed property without an agreement.
- x. In violation of 20 CSR 2250-8.020 (2), in numerous instances, from June 30, 2016 to March 17, 2017, the brokerage conducted business without a current license.

- y. In violation of 20 CSR 2250-4.030 and 20 CSR 2250-8.010 (2), the brokerage's business sign did not bear the name under which the brokerage was licensed and the fictitious name (Ozarks Property Management) was not registered with the Secretary of State.
- z. In violation of 20 CSR 2250-8.090 (9) (C), in four instances, the management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
- aa. In violation of 20 CSR 2250-8.090 (9) (C), in one instance, the management agreement did not specify whether prepaid rents would be held by the broker or the owner.
- bb. In violation of 20 CSR 2250-8.090 (9) (H), in five instances, the management agreement did not include a statement that permits or prohibits the designated broker from acting as a dual agent (form problem).
- cc. In violation of 20 CSR 2250-8.090 (9) (I), in five instances, the management agreement did not include a statement that permits or prohibits the designated broker from acting as a transaction broker (form problem).
- dd. In violation of 20 CSR 2250-8.160 (2), in one instance, the brokerage released records to the owner without a detailed written receipt (management agreement for owner of B & B Properties).
- ee. In violation of 20 CSR 2250-8.090 (9) (J), in five instances, the management agreement did not specify whether the designated broker was authorized to cooperate with and compensate other designated brokers (form Problem).
- ff. In violation of 20 CSR 2250-8.090 (9) (K), in five instances, the management agreement failed to contain a statement that confirms that the landlord received a Broker Disclosure Form (form problem).
- gg. In violation of 20 CSR 2250-8.090 (9) (L), in four instances, the management agreement did not contain the signature of the broker.
- hh. In violation of 20 CSR 2250-8.090 (9) (M), in one instance, the addendum to the property management agreement did not contain the signature of the broker.

- ii. In violation of 20 CSR 2250-8.096 (1), in one instance, the licensee's brokerage relationship was not disclosed in writing.
- jj. In violation of 20 CSR 2250-8.096 (1) (A) 2, on four instances, the written brokerage relationship disclosure did not identify the source or sources of compensation.
- kk. In violation of 20 CSR 2250-8.096 (1) (A) 3, in four instances, the written brokerage relationship disclosure did not confirm that the brokerage relationships were disclosed to the tenant or their respective agent and/or transaction brokers no later than the first showing, upon first contact, or immediately upon the occurrence of any change to that relationship (form problem).
- ll. In violation of 20 CSR 2250-8.096 (1) (A) 5, in two instances, the written brokerage relationship disclosure was not dated by the tenant.
- mm. In violation of 20 CSR 2250-8.096 (1) (A) 6, in one instance, the written brokerage relationship disclosure was not dated by the licensee.
- nn. In violation of 20 CSR 2250-8.096 (1) (A) 6, in two instances, the written brokerage relationship disclosure was not signed and dated on or before the contract date.
- oo. In violation of 20 CSR 2250-8.160 (2), in numerous instances, the brokerage failed to retain records (voided checks) in both the Simmons Bank, account number 94024084 and the Southern Bank, account number 510008279.
- pp. In violation of 20 CSR 2250-8.220 (1), in numerous instances, the broker disbursed funds from the property management escrow accounts at Simmons Bank, account number 94024084, and Southern Bank, account number 510008279, when the owner's account balance was not sufficient to cover the disbursement.
- qq. In violation of 20 CSR 2250-8.220 (3), in one instance, the broker failed to deposit rents within ten (10) days.
- rr. In violation of 20 CSR 2250-8.220 (8), in sixteen instances, the related transaction was not indicated on each deposit ticket for the property management escrow account, as follows:
  - i. Southern Bank, account number 510006450, one instance;
  - ii. Simmons Bank, account number 94024084, fifteen instances.

- ss. In violation of 20 CSR 2250-8.220 (8), in one instance, the related transaction was not indicated on each check written, the corresponding check stub or other record of disbursement of the Southern Bank, account number 510008279, property management escrow account.
  - tt. In violation of 20 CSR 2250-8.220 (8), in numerous instances, the record of bank transfers on the property management escrows held by Southern Bank, account numbers 510006450, and 510008279, did not contain the related transaction.
5. Section 339.020, RSMo, states: It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.
  6. Section 339.100, RSMo, states, in relevant part:
    - ...
    - 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:
      - ...
      - (3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;
      - ...
      - (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]
  7. Section 339.105, RSMo, states, in relevant part:
    1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.
    2. Each broker shall notify the commission of his or her intent not to

maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefor by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

8. Section 339.730, RSMo, states in relevant part:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client[.]

9. Section 339.780, RSMo, states, in relevant part:

...

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

10. Section 339.790, RSMo, states, in relevant part:

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship[.]

11. Regulation 20 CSR 2250-4.020 states, in relevant part:

...

(2) Failure of a licensee to receive the notice and application to renew from the commission shall not excuse the licensee from the requirements for renewal contained in this rule. Any licensee who fails to renew during a subsequent renewal period is no

longer licensed and in order to become licensed again will be required to requalify as if an original applicant. Until a new license is procured, the holder of an expired license shall not perform any act for which a license is required.

12. Regulation 20 CSR 2250-4.030 states, in relevant part:

(1) Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

13. Regulation 20 CSR 2250-8.010 states, in relevant part:

...

(2) A broker's business sign of sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the regular business name, shall be displayed outside of the broker's regular place of business.

14. Regulation 20 CSR 2250-8.090 states, in relevant part:

...

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

...

(C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;

...

(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;

(J) Include specification of whether or not the designated broker is authorized to cooperate with and compensate other designated brokers acting pursuant to any other brokerage relationship as defined by sections 339.710 to 339.860, RSMo, including but not limited to tenant's agents and/or transaction brokers;

(K) Contain a statement which confirms that the landlord received the Broker Disclosure Form prescribed by the commission:

1. On or before the signing of the brokerage relationship agreement; or
2. Upon the licensee obtaining any personal or financial information, whichever occurs first;

...

(L) Contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker;

(M) Any addendums, riders, endorsements, or attachments to the property management agreement or other written authorization between a broker and the owners of the real estate shall contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker.

15. Regulation 20 CSR 2250-8.096 states, in relevant part:

(1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

...

2. Identify the source or sources of compensation;

3. Confirm that the brokerage relationships, if required by rule or regulation, were disclosed to the seller/landlord and/or buyer/tenant or their respective agents and/or transaction brokers no later than the first showing, upon first contact, or immediately upon the occurrence of any change to that relationship;

...

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation;

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the unlicensed office personnel may, in the performance of the duties enumerated in 339.010.5(5)(a)-(e), sign the written

confirmation on behalf of the landlord's agent or transaction broker.

16. Regulation 20 CSR 2250-8.160 states, in relevant part:

...

(2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

17. Regulation 20 CSR 2250-8.220 states, in relevant part:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

...

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

...

(7) In addition to the notification required by section 339.105.2, RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the broker's property management escrow account(s) by the commission or its agent. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account.

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

18. Licensees' conduct, as described in paragraphs 4 a. through ss. above, constitutes cause to discipline Licensees' licenses.



19. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(1), (15), (16), and (19), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860\*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Joint Agreed Disciplinary Order

20. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

21. The terms of discipline shall include Licensees' licenses, 2010007474 (Ozarks) and 2015022454 (Serrano's broker associate license) and 2014029558 (Serrano's broker officer license) shall be placed on probation for a period of three (3) years. Licensees' licenses are hereby placed on three (3) years' probation. During the period of probation on their licenses, Licensees shall be entitled to practice as a real estate association, real estate broker associate, and real estate broker officer provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

22. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:

**Specific Terms**

a. Licensees shall, at their own expense, ensure that quarterly audits of their registered escrow accounts, including account numbers 510008279, 510006430, and 510006450 (Southern Bank), and 94024084 (Simmons Bank), are conducted and completed by a certified public accountant (CPA) approved by the Commission. Within 15 calendar days of the effective date of this Settlement Agreement, Licensees shall submit to the MREC in writing a list of at least three CPAs, including name, address, and relationship to Licensees. The Commission may approve one or more of the listed CPAs or may require Licensees, on grounds that are reasonable, to submit additional names for consideration and approval. The Commission directs the procurement of the services of a CPA to reconcile the registered escrow accounts, including account numbers 510008279, 510006430, and 510006450 (Southern Bank), and 94024084 (Simmons Bank), and submit quarterly reports to the Commission office. These reports shall begin with the third quarter of 2018, which ends September 30, 2018, and continue for one year, concluding with the second quarter of 2019, which ends on June 30, 2019. The reports are due within one month of the quarter end and should contain a three-way reconciliation from the check register to the bank balance to the owner balances. All documents necessary to prove the reconciliation should be submitted with the signed CPA's statement confirming the CPA'S firm completed a reconciliation of each escrow account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the details and documentation necessary to show that all discrepancies were identified and corrected.

b. In addition to the above, within six (6) months of the effective date of this Settlement Agreement, the Commission requires that Licensee Serrano and an employee of Ozark Property Management, LLC, attend a class designed to train both on the proper use of the property management computer software being used by Ozark Property Management, LLC. Upon completion of this required training, Licensee Serrano is to submit proof of the completion of the training by both individuals to the Commission office.

### General Terms

a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.

b. Licensees shall timely renew Licensees' licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a Surrender of Licensure Rights and Privileges form to the MREC along with the original license and any duplicate copies issued to Licensee. Licensees may not add or change licenses without the approval of the commission. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensees would have to apply as an original applicant for a salesperson license. The MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

c. Licensees shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

d. Licensees shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

e. During the probationary period, Licensees shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

f. Licensees shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

g. Licensees shall report to the MREC each occurrence of Licensees' being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

23. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

24. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

25. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

26. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

27. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.


28. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

29. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, United States Post Office Building, 131 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102-1557.**

30. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

**LICENSEES**

  
OzarkProperty Management, LLC  
Antonio Serrano, Designated Broker

  
Antonio Serrano

Date 6-5-18

**COMMISSION**

  
Terry W. Moore  
Executive Director  
Missouri Real Estate Commission

Date 06-08-18